HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE R. SUBHASH REDDY

Writ Appeal No.2156 of 2005

Between:

Kudula Veera Venkata Satyanarayana … Appellant

And

The Government of Andhra Pradesh & others … Respondents

::JUDGMENT::

Counsel for the appellant: Smt.N. Shoba

Counsel for respondents 1 to 3: Government Pleaders for Industries & Commerce, and Panchayat Raj and Rural Development

Counsel for respondent No.4: Sri S.R. Ashok

February 20, 2006

Per G.S. Singhvi, CJ

This appeal is directed against order dated 6-9-2005 passed by the learned Single Judge whereby he dismissed the writ petition filed by the appellant for quashing the renewal of lease granted in favour of respondent No.4 for sand quarries of East Godavari District.

In response to Notification No.4040/2004 A3 (Pts) dated 3-10-2004 issued by the District Level Sand Committee, West Godavari District (hereinafter described as 'the Committee') for auction of sand bearing reaches, the appellant and respondent No.4 Sai Baba Reddy participated in the auction held on 20-10-2004. The appellant is said to have given highest bid of Rs.2,73,25,000/-, but the reach was not allotted to him. Instead, the departmental authorities, after calling

respondent No.4 for negotiations accepted his enhanced bid of Rs.2,80,98,692/-. The appellant challenged the acceptance of bid given by respondent No.4 in Writ Petition No.19735 of 2004, which was dismissed by the learned Single Judge vide his order dated 18-11-2004. Writ Appeal No.1910 of 2004 filed by the appellant was dismissed by the Division Bench along with two other similar appeals, vide common judgment dated
9-12-2004.

About one month before the expiry of the term of lease granted to respondent No.4, the appellant filed Writ Petition No.19701 of 2005 against the proposed renewal of the lease of respondent No.4 and also for quashing the action of the departmental authorities to grant remission of Rs.30 lakhs to the said respondent. He pleaded that Notification dated
3-10-2004 contemplated grant of lease only for a period of one year and as there was no provision for renewal, the department cannot extend the term of lease beyond 30-9-2005.

The learned Single Judge referred to the provisions of Rules 9-B (1) of the A.P. Minor Mineral Concession Rules, 1966 (for short 'the Rules') and the observations contained in judgment dated 29-12-2004 passed by the Division Bench in Writ Appeal No.1910 of 2004 and other connected matters and held that the petitioner does not have the right to compel the Government to lease-out the sand bearing areas to him. He further held that when the relevant law provides for extension of lease for a period of one year, the prayer made by the petitioner against the extension of lease of respondent No.4 cannot be granted.

We have heard learned counsel for the parties and perused the record. At the outset, we consider it proper to take cognizance of some developments which have taken place during the pendency of these cases.

1. On 21- 12-2005, learned counsel for the appellant had made a statement that her client is prepared to accept the lease for a sum of Rs.3.36 crores as against Rs.3,27,01,525/- offered by respondent No.4 and that if fresh auction is held, the Government may get higher bid. After taking note of her statement, the Court directed the appellant to deposit a cheque for Rs.3.36 crores with the Registrar General of the High Court. In compliance of that order, the appellant deposited cheque

representing a sum of Rs.3.36 crores.

2. On the next date of hearing i.e., 30-12-2005, the Court, after taking cognizance of the objection taken by respondent No.4 that there was no specific prayer for quashing the renewal granted in favour of his client, adjourned the case so as to enable the appellant to amend the prayer made in the writ petition.

3. Thereafter, the appellant filed WAMP No.4735 of 2005 for grant of leave to amend the prayer clause of the main petition. This was opposed by the counsel for respondent No.4. After hearing the learned counsel for the parties, the Court vide its order dated 3-1-2006 granted leave to the appellant to amend the prayer clause of the writ petition.

4. On the next date of hearing i.e., 6-1-2006, the Court accepted the prayer of the counsel for the appellant to allow her client to withdraw the cheque of Rs.3.36 crores because hearing of the appeal was being unnecessarily delayed.

Arguments:

Smt.N. Shoba argued that even though the appellant's challenge to the grant of lease in favour of respondent No.4 was negatived by Single as well as Division Benches in the earlier round of litigation, renewal of the lease should be declared as nullity because Rule 9-B (1) of the Rules does not provide for renewal of lease granted for one year and Notification dated 3-10-2004 issued by the Committee also contemplated grant of lease only for a period of one year without any indication that the same could be renewed for a further period of one year. She further argued that the decision of the official respondents to renew the lease of respondent No.4 should be declared as vitiated due to

mala fides because this is a part of the designed exercise undertaken by the Committee to shower undue benefits on respondent No.4. To buttress this argument, Smt. Shoba pointed out that the Committee had granted remission of Rs.30 lakhs to respondent No.4 without any rhyme or reason and, thus, caused loss to the public exchequer and, even after granting renewal, the said respondent was allowed to pay lease money in installments. She assailed the order of the learned Single Judge by arguing that the reason assigned by him for declining relief to the appellant is irrelevant and wholly non-germane to the scheme of the Rules. Smt.Shoba

submitted that failure of the learned Single Judge to examine the appellant's challenge to the renewal of lease granted in favour of respondent No.4 in a correct perspective has not only resulted in manifest injustice to her client, but also caused serious injury to public interest.

Sri S.R. Ashok, Senior Counsel appearing for respondent No.4 argued that renewal of lease of respondent No.4 with effect from 1-10-2005 is consistent with the scheme of

Rule 9-B (1) read with Rule 9-P of the Rules and the learned Single Judge rightly refused to interfere with the decision of the Committee. He pointed out that in terms of Rule 9-B (1) of the Rules, the competent authority is empowered to grant lease for a period of two years with an yearly enhancement of 10% of the knocked down amount and argued that the renewal granted to respondent No.4 cannot be dubbed as arbitrary or vitiated due to mala fides. He pointed out that respondent No.4 had submitted application dated 16-8-2005 i.e., 45 days prior to the expiry of the tenure of the original lease and agreed for enhancement of 10% of the knocked down price and, therefore, no illegality was committed by the Committee to renew the lease. He further pointed out that respondent No.4 had paid Rs.2,75,47,921/- by 2-12-2005 and sought 15 days time to deposit the remaining amount of Rs.51,53,604/- which was granted by the Committee. In the end, Sri S.R. Ashok submitted that the Court may not nullify the renewal of lease at this stage because his client has already operated the same for a period of more than four months and invested huge amount of money.

Learned Government Pleaders defended renewal of the lease of respondent No.4 and argued that the official respondents have the power to grant renewal for one year subject to the enhancement of 10% of the knocked down amount.

We have thoughtfully considered the rival submissions. It is true that Writ Petition No.19735 of 2004 filed by the appellant questioning the acceptance of the bid given by respondent No.4 was dismissed by the learned Single Judge and Writ Appeal No.1910 of 2004 filed against the order of the Single Bench was dismissed by the Division Bench, but that by itself is not sufficient to non-suit the appellant because the issue raised in Writ Petition No.19701 of 2005 and this appeal is substantially different from the one raised in Writ Petition No.19735 of 2004. In the earlier round of litigation, the appellant had challenged the acceptance of the

highest bid of respondent No.4 whereas in this round of litigation, he has questioned the renewal of lease on the ground that the action of the Committee is contrary to the scheme of the Rules.

Rule 9-B (1) and (2) (as amended vide G.O.Ms.No.1, Industries and Commerce (MI) Department, dated 1-1-2001) and Rule 9-P, which have bearing on the decision of this appeal read as under:

Rule 9-B (1) and (2) of the Rules:

"**9-B. Notification of the Sand bearing areas for granting leases by Sealed Tender cum Public Auction:**

1. All the sand bearing areas in the State shall be leased out by Sealed Tender cum Public Auction reach or Village wise wherever applicable by Mandal Revenue Officer of Revenue Divisional Officer or Joint Collector for a specified period in any case not more than two years with an yearly enhancement of 10% of the knocked down amount and subject to the conditions prescribed in the notice of Sealed Tender cum Public Auction as specified in Rule 9-C.

Note:

No reach/Village partly or fully covered by scheduled areas shall be leased out to any person who is not a member of Scheduled Tribe.

Explanation: For the purpose of this rule:-

1. The expression "Scheduled Tribes" shall have the same meaning assigned to it in Clause (26) of Article 360 of the Constitution of India; and
2. The expression "Scheduled Areas" shall have the same meaning assigned to it in Paragraph 6 of the fifth Schedule to the Constitution of India.
3. The District Level Committee as constituted under G.O.Ms.No.356, Industries and Commerce Department, dated 22-11-1999 and G.O.Ms.No.165, Industries and Commerce (MI) Department, dated 23-2-2000 respectively is competent authority to club or sub-divide reaches wherever necessary. The District Level Committee constituted is as follows:

Chairperson of Zilla Parishad	Chairperson of District Level Committee
Joint Collector	Member
Mandal President	Member (to be nominated by the Collector)

Sarpanch	Member (to be nominated by the Collector)
Assistant Director(Mines & Geology)	
District Panchayat Officer	Member-Convener

1. The District Level Committee shall consult the River Conservator with regard to the reaches falling under the River Conservancy Act, 1884. The Committee shall be competent to issue orders of stopping the lifting of sand, after giving due opportunity to the successful bidder if he violates any condition of auction of lifting the sand against the provisions of the Andhra Pradesh (Andhra Area) Rivers Conservancy Act, 1884 (Act VI of 1886)

2. The District Level Committee shall be the authority competent to decide on any matter or problem arising during the course of implementation of these rules.

Rule 9-P of the Rules:

9-P. Payment of second year lease amount: The lessee shall pay the knocked down amount along with 10% enhancement towards the second year lease amount in the General Funds of Zilla Parishad and submit the challans to the District Panchayat Officer concerned on or before 45 days of the expiry of the first year lease period. If no such payment is received, the District Level Committee shall cancel the lease and forfeit the security deposit and shall make necessary arrangement for leasing out the area through sealed tender-cum-public auction. However, the Joint Collector, may condone the delay in payment of second year lease amount provided the lessee makes a request for the condonation of delay before the expiry of first year lease period. However, the District Level Committee may condone the delay in payment of second year amount received even after the expiry of the first year lease period in genuine cases. In respect of the reaches identified to the boatsmans' co-operative societies, the society shall pay the second year amount along with 10% enhancement in not more than four equal quarterly instalments and each instalment shall be paid well before commencement of each quarter. If no such payment is received, the District Level Committee shall cancel the lease and forfeit the security deposit."

Paragraph No.1 of the Notification dated 3-10-2004 issued for holding public auction for sand quarry lease in river Vasista Godavari for a period of one year and the relevant extracts of proceeding bearing RoC No.5102/2004 A3 (Pts) dated 25-10-2004 issued by the Convenor, Sand Auction Committee, which too have bearing on the decision of this appeal, read as under:

Paragaraph No.1 of Notification for Public Auction-cum-Tender for sand quarry leasehold rights.

"In pursuance of G.O.Ms.No.1, Industries and Commerce Department, dated 01-01-2001, the above notification is hereby issued to conduct public auction / sealed tender for sand quarry lease hold rights for the below mentioned reaches which are situated in river Vasista Godavari for a period of 1 year i.e., from
21-10-2004 to 30-09-2005. Auction will be held on
20-10-2004 at 3-00 p.m. in the Z.P. conference hall by concerned authorities. The tender forms can be had from the O/o.the District Panchayat Officer from 04-10-2004 to 19-10-2004. Filled in applications will be accepted on
19-10-2004 till 5-00 p.m."

Proceedings of the Sand Auction Committee in RoC.No.5102/2004 A3 (Pts.) dated 25-10-2004

"Sri V. Saibaba Reddy, Highest Bidder for District Package paid an amount of Rs.74,00,000/- (Rupees Seventy four lakhs) sofar as 25% of the knocked down amount and he has to pay an amount of Rs.2,06,99,692/- towards 75% of the knocked down payment.

In view of the above, confirmation is hereby issued for quarry of sand in 22 reaches mentioned in the notification as a single package i.e., District Package in favour of Sri V. Saibaba Reddy for Rs.2,80,99,692/- (Rupees two crores, eighty lakhs ninety nine thousand and six hundred and ninety two only) for the period from 21-10-2004 to 30-9-2005."

An analysis of Rule 9-B (1) shows that sand bearing areas in the State are required to be leased out by Sealed Tender-cum-Public Auction, reach wise or village wise for a specified period which shall, in no case be more than two years with an yearly enhancement of 10% of the knocked down amount. Rule 9-P which regulate payment of second year lease amount lays down that the lessee shall pay the knocked down amount along with 10% enhancement in the General Funds of Zilla Parishad and submit challans to the District Panchayat Officer on or before 45 days of the expiry of the first year lease period failing which, the District Level Committee shall cancel the lease and forfeit the security amount and also make necessary arrangement to leasing out the area through Sealed Tender-cum-Public Auction. However, the Joint Collector can entertain the request for condonation of delay. The District Level Committee can also condone the delay in genuine cases. If these two rules are read together, it becomes clear that the provision of Rule 9-P

applies only when the lease is auctioned for a period of two years and not otherwise. The penal clause contained in this rule requiring the District Level Committee to cancel the lease and forfeit the security deposit and also making necessary arrangement for leasing out area through Sealed Tender-cum-Public Auction gets attracted only when the lease is for more than one year. Neither Rule 9-B (1) nor Rule 9-P postulates renewal of lease granted for a period of one year. Rule 9-B (1) does contemplate grant of lease for a period of two years at a time, but there is nothing in the language of that rule which would suggest that lease notified and granted for one year can be renewed for another year. If the rule making authority intended to provide for payment of enhanced amount for renewal of lease, then there was no occasion for incorporating the penal clause in Rule 9-P for cancellation of lease and forfeiture of security deposit.

In view of the above analysis of the Rules, we hold that the competent authority can grant lease for a period of two years and, in that event, the second year lease amount has to be paid in accordance with Rule 9-P of the Rules, but if the lease is granted only for one year, then the concerned authority does not have the power or authority to renew the lease. The only course open to the competent authority in the second eventuality is to hold fresh auction in terms of Rule 9-B (1).

The facts of the case on hand show that the Committee had issued Notification for grant of leasehold rights only for a period of one year i.e., from 21-10-2004 to 30-9-2005. The tenure of the lease, as reflected in the proceedings of the Sand Auction Committee dated 25-10-2004 was for one year. The lease actually granted to respondent No.4 was also for a period of one year. Neither the Notification dated 3-10-2004 nor the proceedings of the Sand Auction Committee contemplated renewal of lease at the end of one year's period. Therefore, the decision of the Committee to renew the lease of respondent No.4 for one year commencing from 1-10-2005 is not only contrary to the scheme of Rule 9-B (1) read with Rule 9-P, but is also contrary to the terms and conditions of Notification dated 3-10-2004.

As a corollary to the above, we hold that the learned Single Judge erred in dismissing the writ petition filed by the appellant. While adjudicating the appellant's plea for quashing the renewal of lease granted in favour of respondent No.4, the learned Single Judge proceeded on a wholly erroneous assumption that Rule 9-B provides for extension of lease for a period of one year.

The submission of Sri S.R. Ashok that the Court should not interfere with the renewal granted in favour of respondent No.4 because more than four months has elapsed from the date of renewal and his client has spent substantial amount in operating the lease appears attractive, but cannot be accepted because that would amount to legitimizing a patently illegal and unconstitutional action of the Committee and putting a premium on the wrong done by a public authority which has resulted in loss to the public exchequer. In our view, the action of the Committee to renew the lease granted to respondent No.4 has not only resulted in violation of the right of the appellant and others to participate in the fresh auction, but is also contrary to public interest. If fresh auction was held, the concerned authority would have earned far more revenue as compared to the enhancement of 10% which respondent No.4 agreed to pay. The very fact that the appellant not only agreed to, but also deposited a sum of Rs.3.36 crores shows that in the event of holding fresh auction, much higher amount would have been offered by the prospective lessees. Therefore, renewal of the lease in favour of respondent No.4 is liable to be declared as arbitrary and violative of Article 14 of the Constitution.

In view of the above conclusions, we do not consider it necessary to deal with the plea of the appellant that the action of the Committee is vitiated due to mala fides.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside. As a sequel to this, Writ Petition No.19701 of 2005 filed by the appellant is allowed and order dated 3-10-2005 issued by the Committee for renewal of lease of respondent No.4 is declared illegal and quashed. The official respondents shall now grant lease by holding fresh auction in terms of Rule 9-B (1) read with Rules 9-C to 9-H. Needful be done within a period of two weeks from today. If the bid given by respondent No.4 is highest, then he shall be allowed to continue to operate the lease on payment of the balance amount. If, on the other hand, highest bid is given by the appellant or any other person, then the amount deposited by respondent No.4 should be refunded to him after making proportionate deduction for the period during which he operated the lease.

G.S. SINGHVI, CJ

R. SUBHASH REDDY, J

February 20, 2006

svs